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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Angel Salgado,

No. CV-24-00523-PHX-DWL

10 Plaintiff,

ORDER

11 v.

12 Synergy Payment Solutions Incorporated, et
13 al.,

14 Defendants.

15 Plaintiff has filed a motion for default judgment. (Doc. 20.) For the following
16 reasons, the motion is granted in part and denied in part.

17 I. Background

18 On March 12, 2024, Plaintiff brought this action under the Fair Labor Standards Act
19 (“FLSA”), the Arizona Minimum Wage Act (“AMWA”), and the Arizona Wage Act
20 (“AWA”). (Doc. 1 ¶ 1.) Plaintiff alleges that on January 15, 2024, he began working for
21 Defendant Synergy Payment Solutions, Inc. (“Synergy Payment Solutions”) as a call center
22 manager. (*Id.* ¶ 52.) Plaintiff was misclassified “as an independent contractor” and was
23 “supposed to be compensated[] at a weekly rate of \$1,000” without regard to the number
24 of hours he worked. (*Id.* ¶¶ 54-56.) “During Plaintiff’s employment with Defendants,
25 Plaintiff generally worked approximately between 40 and 50 hours per workweek.” (*Id.*
26 ¶ 61.) Plaintiff was terminated on February 23, 2024 and “worked approximately 90 hours
27 in total” during “his final two-workweek pay period.” (*Id.* ¶¶ 63-64.) Although Plaintiff
28 “was supposed to be paid approximately \$2,000 for his final two-workweek pay period,”

1 he did not receive “any wages whatsoever” for this work. (*Id.* ¶¶ 65-66.)

2 In addition to suing Synergy Payment Solutions, Plaintiff also names an array of
 3 other entity and individual Defendants. As for the entity Defendants—Atrium Bancard
 4 Solutions Inc. (“Atrium”), Icon Payment Solutions Inc. (“Icon”), and Mainstream Payment
 5 Systems LLC (“Mainstream”—Plaintiff alleges that each qualifies as his “employer” for
 6 liability purposes because, *inter alia*, all of the entity defendants “operated as a ‘single
 7 enterprise’ within the meaning of . . . the FLSA.” (*Id.* ¶¶ 12-23, 34-50.) As for the
 8 individual defendants—Sean Mecham and Jane Doe Mecham, a married couple; Jeanette
 9 Wolveen and John Doe Wolveen, a married couple; Luis Romero and Jane Doe Romero, a
 10 married couple; and Ashley Mecham and John Doe Mecham, a married couple—Plaintiff
 11 alleges that each qualifies as his “employer” for liability purposes because they owned
 12 Synergy Payment Solutions and acted directly or indirectly in the interest of Synergy
 13 Payment Solutions in relation to Plaintiff. (*Id.* ¶¶ 24-33.) Plaintiff also more specifically
 14 alleges one of the individual defendants, Luis Romero (“Romero”), was specifically
 15 responsible for his hiring and termination. (*Id.* ¶¶ 53, 63.)

16 On March 26, 2024, Plaintiff filed proof of service as to Jeanette Wolveen, John Doe
 17 Wolveen, Atrium, and Mainstream. (Docs. 6-9.)

18 On April 9, 2024, Plaintiff filed proof of service as to Romero. (Doc. 10.)

19 On May 4, 2024, Plaintiff filed an application for entry of default as to those five
 20 Defendants. (Doc. 11.) That application was granted. (Doc. 12.)

21 On June 6, 2024, Plaintiff filed proof of service as to Jane Doe Romero. (Doc. 13.)

22 That same day, Plaintiff filed a motion for permission to pursue alternative service
 23 as to Synergy Payment Solutions, Sean Mecham, and Jane Doe Mecham. (Doc. 14.) That
 24 motion was granted. (Doc. 15.)

25 On June 18, 2024, Plaintiff filed proof of service as to Synergy Payment Solutions,
 26 Sean Mecham, and Jane Doe Mecham. (Doc. 16.)

27 On June 26, 2024, the Clerk dismissed Icon, Ashley Mecham, and John Doe
 28 Mecham for failure to serve. (Doc. 17.)

1 On July 6, 2024, Plaintiff filed an application for entry of default as to Jane Doe
 2 Romero, Synergy Payment Solutions, Sean Mecham, and Jane Doe Mecham. (Doc. 18.)
 3 That application was granted. (Doc. 19.)

4 On September 20, 2024, Plaintiff filed the pending motion for default judgment.
 5 (Doc. 20.) Defendants have not responded.

6 **II. Default Judgment**

7 The “decision whether to enter a default judgment is a discretionary one.” *Aldabe*
 8 *v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Although the Court should consider and
 9 weigh relevant factors as part of the decision-making process, it “is not required to make
 10 detailed findings of fact.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.
 11 2002).

12 The following factors may be considered when deciding
 13 whether default judgment is appropriate under Rule 55(b): (1) the possibility of prejudice
 14 to the plaintiff, (2) the merits of the claims, (3) the sufficiency of the complaint, (4) the
 15 amount of money at stake, (5) the possibility of factual disputes, (6) whether the default
 16 was due to excusable neglect, and (7) the policy favoring decisions on the merits. *Eitel v.*
 17 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). In considering the merits and sufficiency
 18 of the complaint, the court accepts as true the complaint’s well-pled factual allegations, but
 19 the plaintiff must establish the damages sought in the complaint. *Geddes v. United Fin.*
 20 *Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

21 **A. Possible Prejudice To Plaintiff**

22 The first *Eitel* factor weighs in favor of default judgment. Defendants have not
 23 participated in this action at all—they have not responded to the complaint or to the motion
 24 for default judgment, even though there is evidence that they are aware of this action.
 25 (Docs. 20-2, 20-3.) If Plaintiff’s motion is not granted, Plaintiff will be without other
 26 recourse for recovery. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D.
 27 Cal. 2002).

28 ...

1 **B. Merits Of Claims And Sufficiency Of Complaint**

2 The second and third *Eitel* factors favor default judgment where, as in this case, the
 3 complaint sufficiently states a plausible claim for relief under the Rule 8 pleading
 4 standard. *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978). As noted above,
 5 Plaintiff alleges that Defendants violated the FLSA, the AMWA, and the AWA. (Doc. 1.)
 6 Plaintiff alleges sufficient facts to establish Defendants' liability. The second and third
 7 factors favor default judgment.

8 **C. Amount At Stake**

9 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
 10 relation to the seriousness of the defendant's conduct. The money at stake is relatively
 11 modest and authorized by statute. Thus, the fourth factor favors default judgment.

12 **D. Possible Dispute Concerning Material Facts**

13 Given the sufficiency of the complaint and Defendants' lack of participation, "no
 14 genuine dispute of material facts would preclude granting [Plaintiff's] motion." *PepsiCo*,
 15 238 F. Supp. 2d at 1177. Thus, the fifth factor favors default judgment.

16 **E. Excusable Neglect**

17 Defendants have not participated in any way, despite having been served and
 18 engaging in settlement negotiations with Plaintiff. There is no indication that any
 19 Defendant has failed to respond due to excusable neglect. Thus, the sixth factor
 20 favors default judgment.

21 **F. Policy Favoring Merits Resolution**

22 The last factor usually weighs against default judgment given that cases "should be
 23 decided on their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. The mere
 24 existence of Rule 55(b), however, "indicates that this preference, standing alone, is not
 25 dispositive." *PepsiCo*, 238 F. Supp. 2d at 1177. The Court therefore is not precluded from
 26 entering default judgment against Defendants.

27 **G. Conclusion**

28 Because six of the seven *Eitel* factors favor Plaintiff, default judgment is warranted.

1 H. **Damages**

2 “The general rule of law is that upon default the factual allegations of the complaint,
 3 except those relating to the amount of damages, will be taken as true.” *Geddes*, 559 F.2d
 4 at 560. “A default judgment must not differ in kind from, or exceed in amount, what is
 5 demanded in the pleadings.” Fed. R. Civ. P. 54(c). A plaintiff must “prove
 6 all damages sought in the complaint.” *Philip Morris USA, Inc. v. Castworld Prod., Inc.*,
 7 219 F.R.D. 494, 498 (C.D. Cal. 2003). “[A] default judgment for money may not be
 8 entered without a hearing unless the amount claimed is a liquidated sum or capable of
 9 mathematical calculation.” *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981). District
 10 courts within the Ninth Circuit have held that written affidavits or declarations are
 11 acceptable in lieu of a hearing. *Yelp Inc. v. Catron*, 70 F. Supp. 3d 1082, 1100-01 (N.D.
 12 Cal. 2014) (“To recover damages after securing a default judgment, a plaintiff must prove
 13 the relief it seeks through testimony or written affidavit.”); *Wecosign, Inc. v. IFG Holdings,
 14 Inc.*, 845 F. Supp. 2d 1072, 1079 (C.D. Cal. 2012) (“[A] ‘hearing’ . . . need not include live
 15 testimony, but may instead rely on declarations submitted by the parties, so long as notice
 16 of the amount requested is provided to the defaulting party.”).

17 Plaintiff has submitted a declaration in which he avows that he “worked for
 18 Defendants as a call center manager from on or about January 15, 2024, through on or
 19 about February 23, 2024”; that his “rate of pay, as assigned by Defendants, was \$1,000 per
 20 week, regardless of the number of hours [he] worked”; that he “conservatively estimate[s]
 21 that [he] worked approximately 50 hours per week,” such that his “regular rate of pay was
 22 approximately \$20 per hour (\$1,000 ÷ 50)”; and that “Defendants did not pay [him] any
 23 wages whatsoever for [his] final two workweeks of employment with them.” (Doc. 20-1
 24 6-10.) These assertions are sufficient to establish Plaintiff’s entitlement to damages.

25 Plaintiff seeks \$4,305 in damages on his AMWA claim. (Doc. 20 at 10.) These
 26 damages are capable of mathematical calculation—100 (the number of unpaid hours
 27 Plaintiff worked during his final two work weeks) multiplied by \$14.35 (Arizona’s
 28 minimum wage in 2024) equals \$1,435, and that sum must be trebled under A.R.S. § 23-

1 364(G), which brings the total to \$4,305. Plaintiff is awarded these damages, for which all
 2 Defendants are jointly and severally liable.

3 Turning to his FLSA claim, Plaintiff notes that his AMWA recovery “engulfs [his]
 4 federal minimum wage damages.” (Doc 20 at 10.) This is consistent with case law
 5 suggesting that damages cannot be recovered when they are “engulfed by larger statutory
 6 awards.” *Ignacio Xalamihua, Plaintiff, v. GGC Legacy Janitorial Servs. LLC*, 2023 WL
 7 8891393, *5 (D. Ariz. 2023); *see also Sao v. Pro-Tech Prod. Inc.*, 2019 WL 6909566, *8
 8 (D. Ariz. 2019) (deferring award of FLSA damages pending resolution of AMWA and
 9 AWA claims because any larger award would need to “factor in the FLSA damages”).

10 Finally, AWA provides that “[w]hen an employee is discharged from the service of
 11 an employer, he shall be paid wages due him within seven working days or the end of the
 12 next regular pay period, whichever is sooner.” A.R.S. § 23-353(A). If an employer “fails
 13 to pay any wages due any employee” in violation of the Act’s provisions, “the employee
 14 may recover in a civil action against an employer or former employer an amount that is
 15 treble the amount of the unpaid wages.” A.R.S. § 23-355(A). Plaintiff notes that his unpaid
 16 wages total \$2,000 (*i.e.*, two unpaid work weeks where the agreed-to rate was \$1,000 per
 17 week) and contends that this sum “should be trebled to \$6,000 under A.R.S. § 23-355.”
 18 (Doc. 20 at 11.)

19 The treble damages provision of A.R.S. § 23-355 is discretionary. *Swanson v.*
 20 *Image Bank, Inc.*, 77 P.3d 439, 443 (Ariz. 2003) (“Under the plain language of the statute,
 21 the award of treble damages for the bad-faith withholding of wages is discretionary with
 22 the court.”); *Crum v. Maricopa Cnty.*, 950 P.2d 171, 173 (Ariz. Ct. App. 1997); *see also*
 23 *Rosen v. Fasttrak Foods LLC*, 2021 WL 2981590, *4 (D. Ariz. 2021) (“The Court
 24 possesses wide discretion in determining whether to award treble damages under § 23-
 25 355.”). “The treble damage remedy is a punitive measure that is warranted when employers
 26 seek to delay payment without reasonable justification or to defraud employees of wages
 27 earned” and “is appropriate only when an employer withholds wages unreasonably and in
 28 bad faith.” *Swanson v. Image Bank, Inc.*, 43 P.3d 174, 183 (Ariz. Ct. App. 2002), *aff’d in*

1 *part, vacated in part, 77 P.3d 439 (cleaned up).*

2 Because Plaintiff's declaration provides no indication why Defendants withheld his
3 wages, it does not support the conclusion that the withholding was done "unreasonably and
4 in bad faith." *Id.* The allegations in the complaint are also insufficient. It appears that
5 Plaintiff was initially paid for his work at the agreed-to rate but then something happened
6 in February 2024 that resulted in Plaintiff not being paid for his final two weeks of work.
7 There is no indication in the complaint whether there was any dispute over Plaintiff's
8 wages or the quality of Plaintiff's work, and some of the materials attached to Plaintiff's
9 motion suggest there may have been such a dispute. (Doc. 20-2 at 2-3 [May 2024 letter
10 from Synergy Payment Solutions, stating that Plaintiff "spent exorbitant amounts of time
11 in an office with a closed door on personal calls, administering medications" and that
12 Plaintiff "was doing more harm than good for our office environment"].) At any rate, given
13 Plaintiff's failure to submit evidence (or even allege in a non-conclusory way) that the
14 withholding of wages was done unreasonably and in bad faith, the Court declines to award
15 treble damages.

16 Without trebling, Plaintiff's AWA damages are \$2,000. That sum, like Plaintiff's
17 damages under the FLSA, is engulfed by Plaintiff's larger AMWA award.

18 Therefore, the total damages awarded are \$4,305, for which all Defendants (save
19 Icon, Ashley Mecham, and John Doe Mecham, all of whom were dismissed for failure to
20 serve, *see Doc. 17*) are jointly and severally liable.

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1 Accordingly,

2 **IT IS ORDERED** that Plaintiff's motion for default judgment (Doc. 20) is **granted**
3 as to liability and **granted in part and denied** in part as to damages. A separate judgment
4 shall issue, after which the Clerk shall terminate this action.

5 **IT IS FURTHER ORDERED** that within 14 days after entry of judgment, Plaintiff
6 may file a motion for attorneys' fees.

7 Dated this 15th day of October, 2024.

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11 Dominic W. Lanza
12 United States District Judge
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